



# Republican Policy Committee

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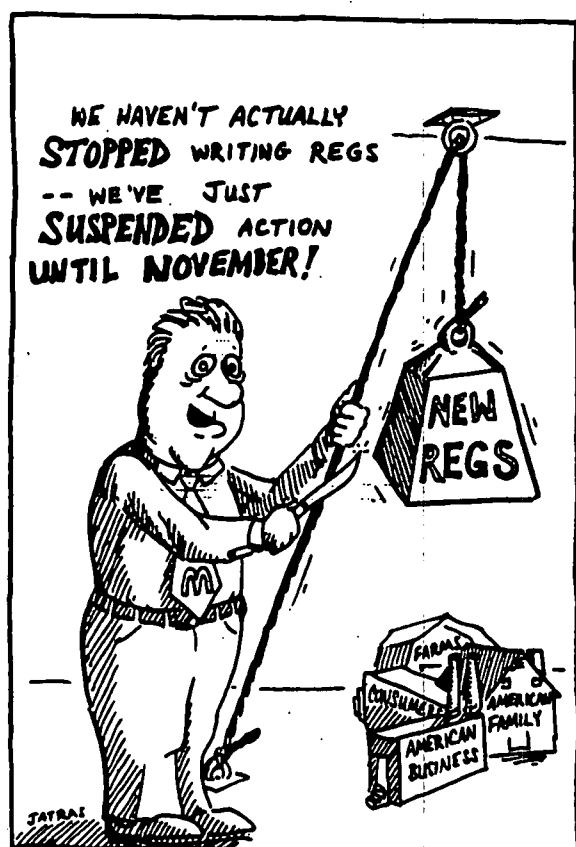
September 24, 1996

## Clinton's 'Reinventing Government' Fails to Reduce Burdens

### Congress, Not Clinton, Slows Regulatory Onslaught

The good news is that federal agencies of late have markedly *reduced the rate* at which they are issuing new rules. Whether one counts *Federal Register* pages, the absolute number of final rules, or the number of "economically significant rules" (costing at least \$100 million a year), federal agencies definitely have slowed down the rulemaking machinery in comparison to the first two years of the Clinton Administration.

The bad news is why. Clearly, this new patina of agency responsibility hardly color-coordinates with the Clinton Administration's vicious — and lamentably, largely successful — opposition to comprehensive regulatory reform legislation. The reason for this regulation-slowdown is *not* a philosophical conversion on the part of this Administration. In fact, key agencies appear to be even more undisciplined in the rules that they are promulgating (see pages 3 to 4, below). Nor is this slowdown the result of the Vice President's "reinventing government" program (see pages 5 and 6, below). Instead, the slowdown merely reflects the fact that *the Clinton agencies have been deferring a record number of rules* to "long term," that is, until after the November elections.



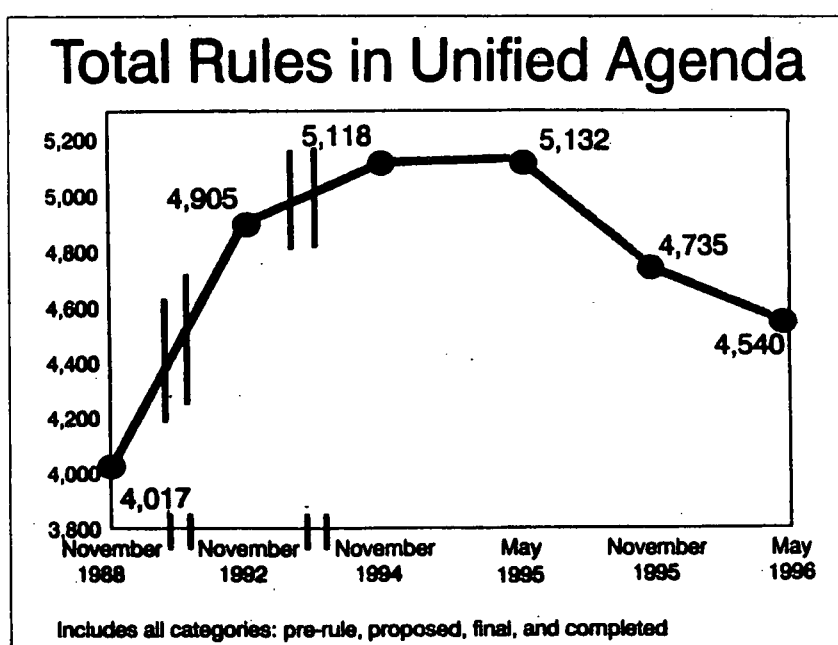
### Pace of Federal Rulemakings Slows

**Federal Register Pages Decline:** RPC and others have pointed to the steady growth of the *Federal Register* as an indicator of the aggressive regulatory activity of the Clinton Administration. While Clinton's first two years as President resulted in dramatic increases in the size of the *Federal Register*, the 1995 *Federal Register* was noticeably smaller, and the 1996 *Register* is currently running at almost exactly the same pace as the same date in 1995. Nevertheless, expressed in terms of "actual pages" (which does not count title pages, blank pages and corrections), Clinton's 1995 *Federal Register* is 62,456

pages, which is still larger than that of any Republican president, and is exceeded only by his 1993 and 1994 pages and by the Carter Administration's pages in 1979 and 1980. [See chart attached as Appendix]

**Planned Regulatory Actions Decrease:** Another indicator of regulatory activity is the total number of regulatory actions proposed by agencies in the Unified Agenda. The OMB is required to publish every spring and fall a consolidated report of all rules in the process of being promulgated for the next six months or longer. In addition, the spring and fall Unified Agendas list all "completed actions," which are final rules issued or rulemakings withdrawn, during the preceding two quarters (e.g., during the second and third quarters for the Fall Unified Agenda). RPC's review of recent Unified Agendas shows that the rise and fall of the number of regulatory actions track the changes in the number of actual *Federal Register* pages.

As indicated in the chart on this page, the total numbers of rules under consideration by all federal agencies steadily increased while the Democratic party was in control of both Houses of Congress. When the Clinton Administration took over in 1993, the number of new rules skyrocketed. However, following the 1994 elections and the change in leadership in the House and Senate, the Clinton Administration's high mark of 5,132 actions in the spring of 1995 dropped to 4,735 by the fall of 1995 and further dropped in the spring of 1996 to 4,590.

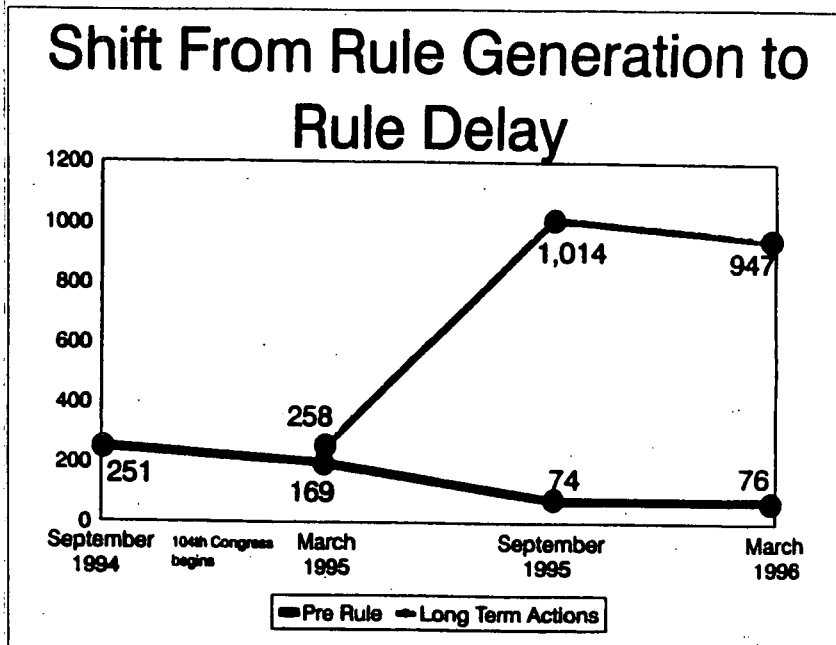


**Number of Costly Rules Drops:** The slowdown in rulemaking since the 104th Congress began is mirrored by a decrease in the number of rules that meet the "economically significant" threshold (generally, those that are expected to have at least \$100 million in annual impacts on the regulated community). Such rules are sent to the Office of Information and Regulatory Affairs (OIRA) for review to see if they meet the President's policies and are cost-effective. Since 1981, the OIRA has been charged with reviewing rules for their burdens on the private sector and for possible inconsistencies with presidential policies. The Clinton Administration sent 135 "economically significant" rules to OIRA during 1994. The number dropped to 75 in 1995 and to 39 for the first eight months of 1996.

## Deferring Actions Until Next Year

**"Pre-Rules" Moved...** Following the 1994 election, the Clinton agencies indicated they would be pursuing one-third fewer new "pre-rule" actions — 169 in the Spring 1995 Unified Agenda — than the number they included in the Fall 1994 edition (251). Subsequently, as **substantive regulatory reform bills were working their way through the Congress during 1995**, agencies further reduced the number of new ideas for rules to 74 for Fall 1995, a 70-percent reduction from Fall 1994 levels. The Spring 1996 Unified Agenda only indicated 76 actions in the "pre-rule" stage. Where did all these "pre-rule" actions go?

... To **"Long Term:"** In a move to appear less pro-regulation, the Clinton Administration responded to Congress' regulatory reform efforts during 1995 by shifting rules from active promulgation to "long term." That term applies to rules for which no agency action is planned for at least one year. As is dramatically shown in the chart on this page, in the Unified Agenda for the Fall of 1995, the Clinton Administration agencies suddenly placed 1,014 regulatory actions into the "long term" category, four times as many as were in the "long term" category just six months earlier in the Spring 1995 Unified Agenda (258).



The Spring 1996 Unified Agenda continues this preference for playing the waiting game with 947 rules scheduled "long term." Among the rules postponed until after November is the highly controversial EPA rule to change the national clean air standards for low-level ozone and particulate matter. This summer, EPA went to court to move the judicially imposed deadline on issuing the proposed rule from this July to November 29, 1996.

## Data Show Little Evidence of Self-Policing by Clinton Administration

Ironically, one of the first regulatory actions of the Clinton Administration was to revoke by executive order the Reagan Administration's Executive Order 12291 governing the review and promulgation of federal regulations. A central feature of the Clinton Executive Order 12866 is its shift in agency review: instead of the Office of Management and Budget (OMB) review,

agencies are encouraged to do their own review once the general direction of the rule has been agreed to by OMB.

The predictable result has been that OMB no longer keeps the agencies in check. During

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*"OIRA functions more as a counselor during the review process than as an enforcer of the executive order. . . . This process has not stopped regulatory agencies from aggressively interpreting the extent of their own authority under existing law." (William A. Niskanen, "Clinton's Regulatory Record," Regulation, 1996 No. 3.)*

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the Reagan Administration, an average of 36 proposed rules were rejected each year by OMB and returned to the agencies. During the Bush Administration, an annual average of 22 rules were rejected by OMB. The Clinton OMB rejected 9 proposed rules during its first year in office, and zero in 1994, 3 in 1995, and zero so far through summer of 1996, for an average of about one per year since 1994.

Moreover, it appears that the Clinton agencies cannot be trusted to critically assess their own proposed rules and discard the lemons. Only an average of 30 agency proposals per year have been withdrawn by the Clinton agencies since the beginning of 1994, while the Reagan-Bush Administrations averaged twice that many (59 per year).

## Comprehensive Regulatory Reform Law Needed

As one of their first acts, the 104th Congress passed the Unfunded Mandates Reform Act of 1995, PL 104-4. In addition to addressing new costs on the public sector during the legislative process, the law requires that for any rules that will impose annual direct costs in excess of \$50 million to state and local governments and \$100 million for the private sector, agencies must consider a number of regulatory alternatives. Among those alternatives, the agency must select one which is the least costly, most cost-effective, or least burdensome. However, a report by OMB, issued on March 22, 1996, shows that during the previous 12-month period, agencies satisfied the Unfunded Mandate law's requirements to analyze alternatives (which is also required in the Clinton Executive Order 12866) in only 4 out of 14 final and proposed rules reviewed by OMB. In her article emphasizing the need for more "teeth" in unfunded mandates legislation, the Heritage Foundation's Angela

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*Robert Hahn of the American Enterprise Institute analyzed 92 major rules promulgated between 1990 and mid-1995 and concluded that only 18 percent of the rules would pass a cost-benefit test. He also noted that "the aggregate net benefit estimates presented [by the agencies] are likely to substantially overstate actual net benefits relative to what a 'neutral' economist would have estimated." [Regulatory Reform: What Do the Government's Numbers Tell Us?, January 17, 1996].*

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Antonelli concludes that the "proposed rules appear to have been issued with OMB doing little more than expressing its hope that the agencies would address the problems with the rules before finalizing them." ("Promises Unfulfilled," *Regulation*, 1996 No. 2.)

The Environmental Protection Agency has been singled out for special criticisms of their attitude toward regulatory process reforms. In a paper released this month, the Majority Staffs of the House Committees on Transportation and on Government Reform and Oversight were particularly critical of EPA's failure to significantly improve its flawed risk assessment methodology, despite President Clinton's promise on March 16, 1995, that "Environmental

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***"The EPA has sought authority to exempt itself from the economic and statistical criteria for beneficial regulation. Even more disturbing, the EPA seems nearly exempt from the Clinton administrations's own guidelines on these issues." (William A. Niskanen, "Clinton's Regulatory Record," *Regulation*, 1996 No. 3.)***

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regulation should be based on the best science and economics, subject to expert and public scrutiny, and grounded in values Americans share." The joint committee report concluded that EPA's potential for "absurdly conservative estimates of risk" does not appear to be improving, and cited criticisms by GAO and the National Academy of Public Administration of EPA for not consistently identifying underlying assumptions and

uncertainties of risk estimates. GAO is in the process of issuing a study critical of EPA's uneven record of adequate peer-review of major scientific and technical work products.

Clearly, comprehensive regulatory reform legislation that mandates reasonable and objective cost-benefit analyses, with judicial review of agency compliance, is still very much needed.

***Congress Receives Reports on Major Rules:*** Until comprehensive regulatory reform is achieved, Congress will have to use the tools it has at its disposal. One of the more recent tools is the Congressional Review Act (PL 104-121), which took effect on March 29, 1996. Since that date, the General Accounting Office has been preparing for Congress a report on each major rule finalized by federal agencies, which have been averaging 1.25 major rules per week (32 major rules received and 24 reports issued so far).

These GAO reports briefly assess the issuing agency's compliance with the Regulatory Flexibility Act, the Unfunded Mandates Act, and any relevant executive orders, including the cost-benefit analysis requirements of President Clinton's executive order. [These GAO reports are submitted to the relevant congressional authorizing committees, and are available in full text at "<http://www.gao.gov/decisions/majrule/majrule.htm>".]

The GAO is working with the Secretary of the Senate to produce a weekly summary of the rules presented to the Congress by the agencies. In addition, the GAO is committed to preparing a semi-annual report, with a discussion of the trends in agency compliance with the relevant statutes and executive orders.

## Clinton's "Reinventing Government" Has Not Reduced Regulatory Burden

On September 7, 1993, Vice President Gore released the National Performance Review, which promised a "long-term commitment to change." He promised it would create a brave new government that "works for people, cleared of useless bureaucracy and waste and freed from red tape and senseless rules." Yet, "reinventing government" has resulted in no more than modest internal agency housecleaning. Moreover, the Administration has done little to reduce the burdens of existing regulations, although the change in power with the 104th Congress did cause the Administration to withdraw and revamp its most onerous regulatory proposals, most notably the OSHA ergonomics and EPA clean air enhanced monitoring proposals.

### ***Price Tag of Regulatory Compliance Estimated at Over Half a Trillion Dollars:***

The regulatory burden has not been reduced by the Administration's "reinventing government" program. A selling point by the 1993 National Performance Review was the recognition by the Clinton Administration that the "cost to the private sector of complying with regulations is at least \$430 billion annually — 9 percent of our gross domestic product." This estimate, from a study conducted by Thomas Hopkins for GAO's Regulatory Information Service Center in 1992, did not include Thomas' estimate of the price tag of federal regulations on state and local governments, which added another \$150 billion per year.

However, all of the reports' recommendations to reduce this regulatory burden were restricted to consolidating internal agency rules, improving inter-agency coordination, decreasing congressionally mandated reports, and increasing waivers for agencies from compliance with federal regulations. Thus, it is not surprising that Thomas Hopkins' most recent study of the burden of federal regulations (prepared for the Small Business Administration in November 1995) estimates that on an annual basis, "regulatory compliance costs are now in the range of \$420-\$670 billion (as expressed in 1995 dollars)."

***No Reduction in Government Workers as Claimed:*** The 1993 National Performance Review promised to reduce the size of the federal government by 252,000 positions. In an article written for the *American Spectator* (February 1996), Byron York cited OMB numbers to show that ***90 percent of the job cuts claimed*** by the Clinton Administration came from civilian workers at the Defense Department (131,200, mostly from base closures), and from the closing down of the Resolution Trust Corporation (9,600) by Congress in 1995. York points out that if one does not count the Defense and RTC cuts, the *Clinton Administration added a net 3,000 workers to the payroll in 1994 and added an estimated net 1,600 workers in 1995.*

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***A similar conclusion was reached by House Civil Service Subcommittee Staff Director George Nesterchuk in a recent article, in which he concludes that 75 percent of the 149,000 FTE reductions from FY 92 to FY 96 are the result of reductions in the Department of Defense that began in 1989. "Reviewing the National Performance Review," Regulation, 1996 No. 3.***

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***Less Savings Than Claimed:*** In 1995, the Clinton Administration claimed that the reinventing government program was already saving \$58 billion. However, Byron York observes that once the \$40 billion in savings from workforce reductions is taken into account, the Vice President's own revised estimates in the 1995 Reinventing Government update indicate gross savings of less than \$18 billion. To explain these disappointing results, York cites Ronald C. Moe, a professor at the Johns Hopkins University Center for American Government, who indicated that Gore's promise of multi-billion-dollar savings does not include the elimination of any substantial government program. York concludes that "Gore's reinvented government is supposed to continue doing everything government has been doing, only more efficiently."

## **Companies Cut Jobs and Reduce Investment to Pay for Regulations**

The reduced rate of rulemaking by the Clinton agencies during the 104th Congress has not translated into reductions in the total burden imposed by existing federal regulations on the U.S. economy. A study — entitled "Federal Regulation and Its Effect on Business," released by the U.S. Chamber of Commerce in June and based on two separate surveys of 800 businesses each — showed that firms dealt with the cost of compliance by cutting jobs, deferring hiring, cutting employee benefits, raising the price of goods, or reducing profits.

Specifically, the survey concluded that the larger the firm, the more likely it was to increase prices and reduce profits in response to increasing regulatory costs.

### ***What Businesses Want:***

- Forty-six percent of the 800 companies polled spend more than 5 percent of their annual budgets on labor regulations; and 33 percent spend more than 5 percent of their annual budgets on environmental regulations (with the highest burden falling on agricultural businesses).
- Eight times as many firms believe that a regulatory system emphasizing compliance through assistance or based on self-policing would be more effective than prefer the present system which emphasizes compliance through enforcement. Nevertheless, the Clinton Administration's EPA is insisting on "polluter pays" and vehemently opposes "self-help" audit protection laws passed by 19 states and being considered by another 25.
- Nearly all the businesses responding to the survey said that they would be better off if regulations were tailored to their specific industry rather than applying to all businesses.

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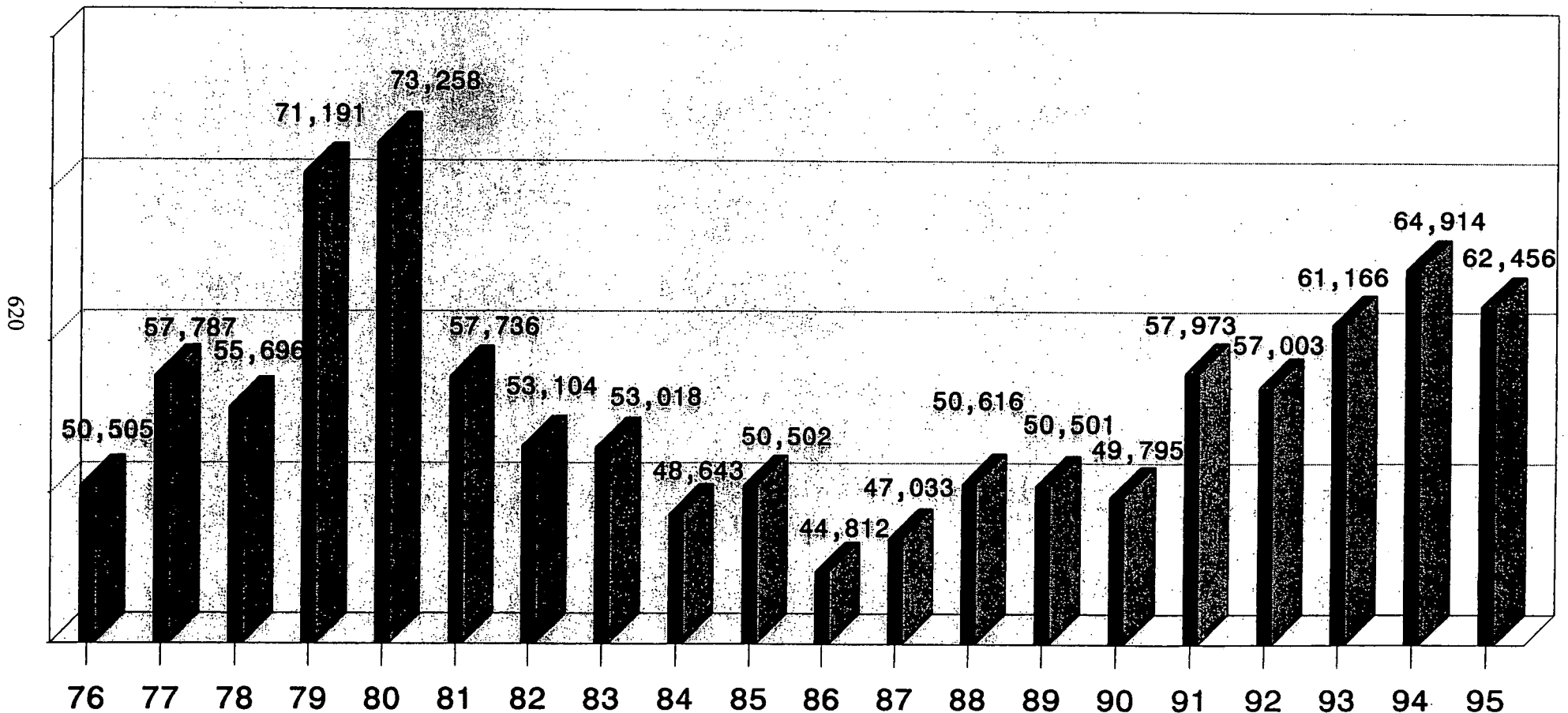
Research: Hans Schindler, RPC/Fulbright Scholar.

Illustration: Jim Jatras, RPC staff.

[Attachment: *Federal Register* Pages Chart]

# Federal Register

## Actual Pages Published by Year



\*Blank pages & corrections are excluded.

Source: Office of the Federal Register